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SUPREME COURT, U.S.

No. 73-418

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In the Supreme Court of the United States

OCTOBER TERM 1973

IN RE:

HARRY PORCYNALEK HUTUL

AN ATTORNEY,

Petitioner

In the Board of Managers of Chicago Bar Association, Association as Commissioners of the Supreme Court of Illinois, By: John Cadwalader Menk, Amicus Curiae,

Respondent.

On Petition for Appeal and for Writ of Certiorari to the Supreme Court of Illinois.

Petition for Rehearing

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Petition for Rehearing

The Petitioner herein respectfully moves this Court for an Order (1) vacating its denial of the Petition for writ of certiorari, entered November 19, 1973, and (2) granting the petition. As grounds for this Motion, petitioner states the following:

The 14th Amendment to the United States Constitution which is binding on all states, provides:

> **". . . nor shall any State deprive any person the right of life, liberty or property, without the due process of law, nor deny to any person within its' jurisdiction the equal protection of the laws."**

This Court, in denying the Petition for Writ of Certiorari in the instant cause of action is refusing to accept its responsibility in determining the denial of due process and property rights and privileges of said Petitioner herein.

Beyond question, doubt or reservation, the Illinois Supreme Court is giving accord and credit to the decision rendered in *U.S.* v. *Hutul,* 416 Federal 2nd, 607; 905 S.C. 573, by ever and constant repetition of the decision and findings of the same in its decision in the Illinois Supreme Court No. 43292 and in all the pleadings thereof and herein. The Illinois Supreme Court denies due process to Petitioner by ignoring and giving no credit or accord to the general verdict and findings of its own Illinois Criminal Court proceedings, 61-2942. The acquittal in the latter case yields reasonable inference of no criminal intent nor any criminal misconduct, just as completely and fully as the findings and general verdict, yield criminal intent in 64 C.R. 408 and the decision cited as aforesaid.

Every pleading in the disciplinary proceeding cites and sets forth the decision of the 7th Circuit Court of Appeals in the 64CR 408 Federal Court proceedings and nothing else. Total reliance on the findings set forth therein is therefore patent.

The pleadings in the instant matter before this Court, No. 73-418 again repeats and cites that decision and findings of the 7th Circuit Court of Appeals and its inference of criminal intent and misconduct. "Due process and equal protection of the law" as guaranteed by the 14th Amendment to the United States Constitution requires that the Illinois Supreme Court give equal effect and weight to the inferential findings of innocence of criminal intent and misconduct by the Illinois State Criminal Court proceedings of identical character and evidence as set forth in Petitioner's pleadings and the appendices thereto.

The Illinois Supreme Court in this disciplinary proceedings never even acknowledged those reasonable inferences from the findings and general verdict of its own Criminal Court even on the factor of mitigation.

In fact, the Illinois Supreme Court in the instant proceedings gives effect to the 7th Circuit Court of Appeals decision inferences by citation thereof of all the proceedings therein. This Court, the Supreme Court of the United States, has decided heretofore in *Ashe* v. *Swenson,* 90 S.C. 1189 and *Waller* v. *Florida,* 90 S.C. 1184 that one determination of the facts yielding intent and misconduct "for the criminal episode" really concludes the issues on that fact.

The Illinois Supreme Court in *People* v. *Hairston,* 46 Ill. 2d 348 concurs in the findings and decisions in the aforesaid cases.

And yet, in this instant proceeding, the Illinois Supreme Court by its decision, and this Court, by refusing to grant certiorari, are rendering a third decision on a set of facts where criminal intent and misconduct yield moral turpitude and professional disrepute as a necessary coincidence by virtue of crediting only one of those findings, that one detrimental to the Peittioner.

By its decision to disbar Petitioner, the Illinois Supreme Court stamps its imprimatur on findings of fact by the Federal petit jury without ever adverting to the opposite conclusion reached by the State petit jury which heard identical evidence, that is fundamentally unfair.

Petitioner sincerely and genuinely contends that such holdings violate due process and equal protection of the law, especially in this case where diametrically opposite decisions and determinations of fact prevail concomitantly.

Simply and plainly, the Illinois Supreme Court should be required to give at least equal weight, accord and credit and be bound by the decision of its own State Criminal Court and its reasonable inferences of non-criminality as to misconduct and intent. Moral turpitude cannot be inferred from the State Criminal Court acquittal.

The disciplinary proceedings in the instant cause and the adverse decision rendered which is based solely on evidence of the Federal Criminal Court conviction deprive Petitioner of the privilege of practicing law and property right inuring thereby and violate his Constitutional right to due process and equal protection of the laws.

Both this Court and the Illinois Supreme Court are tendered the same claims of collateral estoppel and res adjudicata by both parties, Petitioner and Respondent, since the pleadings throughout, on both sides rely on the prior determination of the factual circumstances by decision of other courts, to-wit: Petitioner relies on the findings of innocence in the Illinois State Court, Illinois Criminal Court, No. 61-2942, the Chicago Bar Association relies on the determination of the Federal Criminal Court Proceedings, 64 CR 408.

This Court should consider the question and determine whether one course of conduct yielding diametrically opposed findings and conclusions and inferences should or could preclude Petitioner from his privilege of practicing law and the property right inuring thereby.

CONCLUSION

In this situation, where two juries reached opposite conclusions (verdicts) from the same evidence, it is fundamentally unfair to rely on one and disregard the other, especially where that unilateral response to the contradiction deprives Petitioner of his economic life. For these reasons, as well as those contained in the Petitioner's Writ of Certiorari, Petitioner prays that this Court grant rehearing of the Order of denial, vacate that order, grant the Petition and review the judgment and opinion below.

Respectfully submitted,

HARRY PORCYNALEK HUTUL, *Pro-Se*

CERTIFICATE OF COUNSEL

Harry Porcynalek Hutul, pro se, hereby certifies that this Petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

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HARRY PORCYNALEK HUTUL, *Pro-Se*

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 1973, three (3) copies of the Petition for Rehearing were mailed postage prepaid to John C. Menk, Esquire, 29 S. LaSalle, Chicago, Illinois 60603, Counsel for Respondent. I further certify that all parties necessary to be served were served.

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HARRY PORCYNALEK HUTUL, *Pro Se*